

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

UNITED STATES OF AMERICA

Case No. 91-Cr-78

- against -

CHRISTOPHER P. DROGOUL

Defendant.

**DEFENDANT CHRISTOPHER DROGOUL'S MOTION
TO DISQUALIFY THE DEPARTMENT OF JUSTICE**

Comes now the defendant, **Christopher Drogoul**, by and through his undersigned counsel, who moves the Court for (1) the disqualification of any and all representatives of the United States Department of Justice from the prosecutin and investigation of this indictment and/or a formal request to the Attorney General to invoke the provisions of 28 U.S.C.A. § 591 and seek the appointment of an independent counsel to investigate and prosecute this matter; and, in the alternative (2) setting this motion down for a hearing at which the government must produce to the court, for its in camera inspection, all documents and materials material to the issues raised herein; and (3) for the disqualification of Assistant United States Attorney Gale McKenzie from participation in the prosecution and trial of this matter, and (4) a stay of the

disposition of the government's motion in limine to preclude evidence of prosecutorial decisionmaking, pending the disposition of this motion.

WHEREFORE, for the reasons set forth in the accompanying Memorandum of Law, the defendant respectfully requests that this Court grant the relief set forth above.

A handwritten signature in black ink, appearing to read "R. M. Simels", written over a horizontal line.

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA : ATLANTA DIVISION

UNITED STATES OF AMERICA

-----X
Criminal Action
No. 1:91-Cr.078-01
(GET)

- against -

CHRISTOPHER DROGOUL, et al

Defendants.

-----X
DEFENDANT'S MEMORANDUM OF LAW IN SUPPORT
OF HIS MOTION TO DISQUALIFY THE DEPARTMENT
OF JUSTICE FROM THE INVESTIGATION AND PROSECUTION
OF THIS INDICTMENT

The defendant, Christopher P. Drogoul, by his attorneys, Robert M. Simels, P.C., submits this Memorandum of Law in support of his motion for the disqualification of the Department of Justice in the prosecution of this indictment, and for the additional relief listed below, and in opposition to the government's motion in limine to preclude evidence of prosecutorial decision-making.

INTRODUCTION

We do not submit this motion lightly or frivolously. The arguments we posit and conclusions we aver are of the most dire and drastic proportion. While the government may respond that this application is "groundless" and an act of desperation, we have considered our course

seriously and soberly. Moreover, due to our late entrance into this case, we have been favored (at least in this one instance) by the necessity for a retrospective review, allowing us a clear sense of the overall history, tone and progress of this case from August 4, 1989 through the present. The instances of prosecutorial overreaching, suppression of evidence, and outright conflicts of interest transcend the appearance of impropriety and evoke a sense of collusion and politically selective prosecution. The defendant submits that the events set forth below are of such character that make it impossible for the Department of Justice to continue to prosecute this matter. Consequently, we are petitioning this court for the extraordinary relief of (1) the disqualification of any and all representatives of the United States Department of Justice, and a formal request to the Attorney General to invoke the provisions of 28 U.S.C.A. § 591 and seek the appointment of an independent counsel to investigate and prosecute this matter; and, in the alternative (2) setting this motion down for a hearing at which the government must produce to the court, for its in camera inspection, all documents and materials material to the issues raised herein; and (3) for the disqualification of Assistant United States Attorney Gale McKenzie from participation in the prosecution and trial of this matter.

I.

**THE DEPARTMENT OF JUSTICE SHOULD
BE DISQUALIFIED FROM THE INVESTIGATION
AND PROSECUTION OF THIS INDICTMENT**

A. **The Relationship Between The Government And
The Banca Nazionale Del Lavoro.**

This prosecution had its genesis in information provided by Jean Ivey and Mela Maggi, two former employees of the Atlanta agency of the Banca Nazionale del Lavoro. In July, 1989, the two women had begun to furnish information to the Federal Bureau of Investigation regarding the lending activities of the bank. As a consequence of the information provided by Maggi and Ivey, Special Agent Joseph Hardy obtained a search warrant for the premises of BNL-Atlanta. It is clear that apart from the details provided by Maggi and Ivey, two active participants in the "scheme", the investigative authorities had no real idea of the scope of BNL-Atlanta's activities, or the identity of the participants. Consequently, it was impossible to eliminate the possibility that the practices in Atlanta had been carried out with the complicity and acquiescence of the bank's main office in Rome. Moreover, there must have been a presumptive assessment that any criminal culpability lay with the corporate entity of the bank in Rome, since Drogoul, Von Wedel, Ivey, Maggi, et al, were all employees of the Italian bank.

Moreover, the details provided by the two informants described a scenario in which billions of dollars were borrowed by BNL on the open

market, to facilitate the disbursements made on behalf of the Central Bank of Iraq and Rafidain Bank. Common sense would lead to a primary conclusion that a bank as small as BNL-Atlanta could not negotiate such huge sums of money in absolute secrecy. Thus, as the investigators prepared for the raid at the bank's offices, there could have been no foreclosure of the possibility that the suspected scheme was of international proportion, involving the upper echelons of the Banca Nazionale del Lavoro¹.

On August 4, 1989, this warrant was executed and countless thousands of documents were seized, perused and photocopied. In addition, the employees of the bank who were present at the time of the "raid" were interviewed regarding their knowledge of the details of BNL's activities. One of those interviewed on August 4 was Therese Barden, a Vice-President and

¹ This natural primary assumption is substantiated by the notion that prior to August 4, 1989, there was no contact between any of the investigative personnel and the bank's main office in Rome. The unresolved question of the scope of participation is also evinced by the search warrant affidavit executed by Special Agent Joseph Hardy, in which he described:

...criminal violations of the conspiracy statute, that is, Title 18, United States code, Section 371, including conspiracy to violate Title 18, United States Code, Section 1001, as described [sic] about, as well as, conspiracy to defraud the United States by cheating it out of its money and property; by interfering with and obstructing one of its lawful government functions through trickery, deceit, and by other means which were at least dishonest.

There is no reference whatsoever to defrauding the bank in Rome, either by factual recitation, or by the incorporation of the mail and wire fraud counts now present in the indictment.

Operations Manager of bank. She told Special Agent Charles Moore that in regard to the excess and "off-book" loans to the Central Bank of Iraq and Rafidain Bank

...All of the work that goes on for the two banks is at the direction of DROGOUL. He keeps telling them, not to worry about the way they are doing it as someone in Rome knows about it and he had a verbal okay to do it before they had a switch over in management. DROGOUL would not give her the name of the person who gave the verbal okay to do it this way...²

(F.B.I. 302, August 15, 1989, emphasis added).

Although the early statements of Jean Ivey and Paul Von Wedel have not been furnished to counsel, we presume those statements are consistent with the testimony given by them in September, 1992. In this vein Mr. Von Wedel attested to a conversation with Drogoul after a managers' meeting in Rome:

Q: Did you learn anything about what happened at that meeting? Did anyone tell you about what happened?

A: Mr. Drogoul.

Q: What did he tell you happened?

A: He told me he was walking back from the reception to the hotel with Mr. Florio and that Mr. Florio was happy with the ways thing were pro-

² In a subsequent interview, conducted by Special Agents Art Wade and K. Golec, Barden was able to recall "that Drogoul had told her that he had verbal approval from Mr. Florio to do the Iraq deals." (Memorandum of Interview, April 12, 1990).

gressing in our branch and our ratings were going, and he asked Mr. Florio if he could do the entire allocation for Iraq for fiscal year 1986, and Mr. Drogoul told me that Florio approved it.

Q: Gave a verbal approval?

A: Yes, Unh, hunh.

And with regard to the creation of the infamous "gray-book", Mr. Von Wedel testified:

...Chris said he was told [by Pedde] to generate more income with transactions that would not be reflected in our balance sheet to effect - what you call it - loan-to-capital ration. Chris did not come back and say that Mr. Pedde said we were to put things in the gray book.

(Sentencing hearing, 9/23/92, P. 1031).

And as to his own perceptions, Mr. Von Wedel testified that "I always felt that Lavoro Bank knew, and I didn't know who, but the bank, people within the bank knew what was happening, especially in relation to the CCC..."

(Sentencing hearing, P. 1032).

Another source of early information to the government was equally irresolute about the true scope of the lending activities. According to Jean Ivey:

THE COURT: Did anything occur during the time that you were at the bank through your conversations with any of the Rome officials, or Mr. Guadagnini

or anybody else who might have been in the bank, that indicated to you that Rome, BNL-Rome, was aware of what was going on?

THE WITNESS: There was -- not any conversation, no, sir. I did find it hard to believe that they didn't know about it. I certainly felt --

THE COURT; Why do you say that?

THE WITNESS: I just -- it was hard to believe they didn't know that. It was hard to believe auditors couldn't find it. I find that just hard to believe, but that was the situation. But I had no -- I have no knowledge of their involvement.

THE COURT; What you are saying is that you had no conversation --

THE WITNESS: That's right.

THE COURT: -- with anyone from Rome or with the auditors, and you heard nothing from any of those people that would indicate that they were aware that there was this activity at the bank, but that in your opinion, or at least based on your experience with the bank, they should have known? Is that what you are saying?

A: Yes, sir.

(sentencing hearing, 9/25/92, p. 1411-12).

Again, we cannot document what these cooperating witnesses told representatives of the government in the days preceding and immediately following the

August 4 raid. However, since the government has not furnished counsel with any Giglio material, we presume that the statements of each witness are internally consistent. Certainly, if either witness had made prior inconsistent statements, they would have been confronted with them during the government cross-examination.

Thus, at an extremely early stage of the investigation, three high-ranking officers of the bank had either directly or implicitly suggested the involvement of Italian officers of the parent branch³. As we have previously stated, the sheer volume of the monies being borrowed and lent alone would warrant scrutiny of involvement beyond the local parameters of the Atlanta bank.

Given the government's ignorance of the scope of these activities, it is absolutely inexplicable that at the very first debriefing of the main target of the investigation, the government permitted both the lawyers for and representatives of BNL-Rome to observe the questioning. During the initial interrogation of Mr. Drogoul by F.B.I. Special Agent Hardy, presumably in furtherance of the investigation of this enormous financial "scandal", the government allowed two "civilians", Bruce Kirwan, the attorney for the bank, and Franco Raffo of BNL-Rome, to participate. Moreover, this

³ Information pertaining to the "Danielli" transaction was recovered at the time of the August 4 search, which clearly denoted Teodoro Monaco as a participant. At that early juncture, there was simply no way of knowing the true extent and scope of Monaco's involvement. What was clear those early days was that Danielli was an "off-book" transaction, and that it had been initiated and referred to BNL-Atlanta by Monaco.

astonishing detail is outdone by the fact that Drogoul was asked whether BNL-Rome was involved in the presence of that bank's representatives! One is hard-pressed to envision any other law-enforcement setting in which a target of a criminal investigation is asked whether he can inculcate another individual, with that very person sitting directly across the table, or in which a potential target is allowed to participate in the government's investigation as it unfolds.

We have heard the government assert that it was Drogoul's request that he provide information to as many individuals at one time as possible, and therefore the presence of Kirwan and Raffo was at his behest. Even assuming the truth of such an assertion, this argument is ludicrous. We simply do not accept that the parameters and ground rules for a government criminal investigation are set by the prime suspect. There can also be no question as to the decidedly criminal setting of the August 10 "interview". Mr. Drogoul was advised of his constitutional rights, in the presence of Kirwan and Raffo. In addition, Ms. McKenzie, who was not present during the two days of questioning did make an appearance for the limited but express purpose of informing Drogoul:

that Mr. DROGOUL's cooperation, if any, would be made known to the court if a plea was entered in this case. Such cooperation, if truthful and complete, could be considered by the court in its determination of acceptance of responsibility and the corresponding two point reduction under the Sentencing Guidelines. No other promises were

made to Mr. DROGOUL or his attorney with regards to his cooperation, however.

(F.B.I. 302, August 16, 1989).

Given these attendant circumstances, it cannot be said that this was an informational gathering for which the presence of Kirwan and Raffo was essential. Indeed, the government had obtained a search warrant predicated on an ostensible showing of probable cause that Drogoul had committed violations of 18 U.S.C.A. § 371 and 18 U.S.C.A § 1001. The advisement to Drogoul that "anything he said would be used against him in a court of law", combined with Ms. McKenzie's "benefits of cooperation" speech, indisputably created the atmosphere of criminal interrogation. The attendance and participation in a criminal interrogation, by individuals who not only are not government representatives, but are potential targets of the investigation, defies all precepts of legal propriety.

While this episode is distressing, its impact in isolation is minimal compared to its significance as part of the pattern of an improper relationship between the government and BNL-Rome. As of August 29, 1989, the government had questioned Drogoul on three lengthy occasions (August 10, 11 and 28). During the latter two sessions, neither Kirwan nor any representative of BNL-Rome was present. However, on August 29, 1989, Gale McKenzie, Joseph Hardy, and several other federal agents met with

"Bruce Kirwin, attorney for BNL-A⁴, to discuss timing of pleading/indictments and contradictions in Drogoul's statements," (Memorandum of Federal Reserve Examiner Madeline Marsden, September 25, 1989, hereinafter "Marsden Memo"). Presumably, this discussion served to enlighten Kirwan as to the information provided by Drogoul to which he was not yet privy. Since this complex investigation was still in its nascence, the choice to compromise its integrity is incomprehensible. Certainly, after twenty days of frenetic document review and debriefings, the investigators could not have conclusively established that BNL-Rome was not involved. Thus, it is not unreasonable to conclude that every bit of information that Kirwan was being provided was being funnelled back to the upper echelons of the bank in Rome.⁵

We fully expect the argument that BNL-Rome had agreed to "cooperate" with the government investigation, and was therefore working closely with the investigators. Such a position, while facile, is specious. Where the milieu is a criminal investigation, cooperation generally connotes the furnishing of information; here Kirwan was the beneficiary of disclosure of government strategy ("timing of pleadings/indictments...") as well as its line

⁴ Lest there be any confusion, Kirwan was representing the bank in a capacity adverse to that of Drogoul. Drogoul retained Ted Lackland when, after firing him on August 9, 1989, the bank refused to provide him with legal counsel.

⁵ This is far more than idle speculation. As seen below, the pipeline of investigative information to BNL-Rome ran from Gale McKenzie's door through the offices of Bruce Kirwan, and later King & Spalding.

of attack against BNL's primary accuser ("...contradictions in Drogoul's statements"). Similarly on September 15, Kirwan met with McKenzie, Bob Kennedy and Joseph Hardy, a meeting at which "Drogoul's allegations against other BNL employees⁶ were discussed." (Marsden Memo). The unfortunate irony of this scenario is obvious: on September 11, Drogoul provided the government with information inculpatory representatives of BNL-Rome. The government proceeded to share that information with Rome's lawyers so that Rome could deny his assertions, which then were categorized as "spurious" and "unfounded".

If the adversarial nature of the relationship between Drogoul and BNL-Rome wasn't clear enough by this point, on October 12, 1989, the bank, by its attorneys, King & Spalding, filed a civil RICO suit against Drogoul and Paul Von Wedel in the district court in Atlanta. Therefore, as of that date, the antagonistic positions of each became legally formalized.

It is important to digress from the detailing of the unfolding relationship between the government and BNL-Rome to understand the events against which this stage was set. As a consequence of the raid on

⁶ Since, Ms. Marsden's memo refers to the Atlanta branch throughout as "BNL-A", we assume that this one divergence represents Drogoul's assertions of the involvement of representatives of BNL-Rome. This assumption is also predicated on the event of a September 11, 1989 interview of Drogoul by Bill Estes of the Federal Reserve. During that "interview" (at which Kirwan was not present), Drogoul had discussed the activities of Teodoro Monaco, Antonio Costa, and Rafael Galliano, as well as a representative of Rome named "Dicero" who "knew early on BNL Atl used extinct credit lines to finance other business." (Notes of Bill Estes, meeting of 9/11/89).

August 4, a tumult of government activity ensued. Since BNL had been the largest financier of the Iraqi participation in the C.C.C program, close scrutiny was given to the program, the Iraq record therewith, and the prudence of future credits. This involved discussions and investigations by several major agencies in the government, including the Departments of State, Agriculture and Treasury, the General Accounting Office and the Office of Management and Budget. In addition, the National Advisory Council on International Monetary and Financial Policies (NAC), the agency responsible for allocating C.C.C. credits were considering the impact of the "scandal" on future credits to Iraq.

On other fronts as well, there was a groundswell of reaction to the unfolding scenario. The Federal Reserve Bank conducted its own investigation of BNL's activities, as did the Bank of Italy, and the Italian Senate. Rep. Henry Gonzalez, chairman of the House Committee on Banking, Finance and Urban Affairs began to address these events on the floor of the House, ultimately convening formal hearings in 1991.

Several of these events are inextricably linked to the collusive relationship which developed between the office of the United States Attorney and the Banca Nazionale del Lavoro. For example, the reports of both the Federal Reserve (issued on August 28, 1989), and the Bank of Italy (issued in March, 1990) either directly or implicitly inculcate BNL-Rome in the Atlanta activities. The Italian Parliamentary Committee reached a similar

conclusion, as did Representative Gonzalez. During the period from August 4, 1989 through 1990, the Central Intelligence Agency was generating reports substantiating some degree of complicity on the part of BNL-Rome.⁷ Indeed, the clear thrust of the investigative consensus was that BNL-Rome was involved to some degree in the transactions generated by their Atlanta agency.

The pertinence of these events cannot be downplayed by virtue of their political nature. It is, in part, the essence of this application that the Atlanta prosecutors were immersed in the political machinations accompanying their investigation. Gale McKenzie, for one, divulged the results of her investigation to representatives of the Commodity Credit Corporation, to aid in their assessment of whether to grant additional creditors to Iraq. This information was then filtered to the State Department, NAC, the Treasury Department and the White House. She had meetings with representatives of

⁷ In October, 1989, a report was prepared by the C.I.A. reflecting that BNL-Rome "had directed a foreign company to BNL-Atlanta to do business in Iraq." Sources of this information concluded that BNL-Rome "must have known". At the same time, a separate report was generated containing a statement that "many international bankers familiar with the BNL situation strongly believe" that BNL was aware.

In November, 1989, a C.I.A. paper entitled "Iraq-Italy: Repercussions of the BNL-Atlanta Scandal" details the account of a BNL official in Chicago who notified Rome and New York of Drogoul's activities.

On January 31, 1990, Jack Duggan of the C.I.A. wrote David Kunkel of the U.S.D.A that "managers at BNL headquarters in Rome were involved in the scandal..."

We do not know whether these reports or documents were furnished to the prosecutors in Atlanta, but they clearly evince that the concept of Rome's complicity did not develop in a vacuum.

the Federal Reserve, the Department of Agriculture, the Italian Senate committee, Italian Ambassador Petriggiani, and had communications with a staff attorney for the President, Jay Bybee.⁸

Against this backdrop, the behavior of the government attorneys was dramatically improper. By the time McKenzie, et al. were discussing Drogoul's allegations about Rome with Bruce Kirwan, the Federal Reserve had concluded that BNL was not the proverbial innocent lamb. Four days after that meeting, the Defense Intelligence Agency prepared a report detailing speculation that "the B.N.L. mechanism was but a part of a larger NATO strategy to ensure an Iraqi victory in its war with Iran" (references to this report can be found in the report of the Senate Select Committee on Intelligence).

But the true measure of the collusive quality to the investigation is best illustrated by the reports prepared by Paolo Divito, a member of the Executive Committee of the bank. Apparently, Mr. Divito, in the normal course of his business duties, prepared a series of reports relative to the "Atlanta" matter, jointly known as the "Divito Diary". It is through the examination of these reports that the collaborative efforts of the government

⁸ Jay Bybee was the White House liaison to all inter-agency matters regarding Iraq. He was in constant contact with Alan Raul, general counsel for the Department of Agriculture, who repeatedly briefed him on the information pertaining to the BNL investigation that Raul was receiving from McKenzie. Thus, Bybee's telephone call in November, 1989, was not a matter of happenstance, or a chance social call. Since Bybee was getting all the information he needed from other sources (see chronology dates 12/21/89, 1/12/90, and 3/13/90), there must have been another purpose to that telephone call.

and the bank become clear.

On December 15, 1989, hours after Italian Treasury Minister Carli had reported to the Italian Senate that BNL-Rome had knowledge of Drogoul's activities, Gale McKenzie was meeting with officials from the bank in Rome, Bruce Kirwan, and Walter Driver, of King & Spalding, the bank's attorneys. Mr. Divito reported the following:

Friday morning the first reports began to arrive from the Atlanta meeting between the BNL delegation...and the Assistant U.S. Attorney in charge of the criminal proceedings. What emerged in concise terms were three fundamental elements:

- a) no one is implicated outside Atlanta;
- b) nothing is emerging which would prevent BNL from paying debts to third parties;
- c) the Assistant U.S. Attorney is inclined to incriminate the Iraqis only upon a strong request from the injured party...

(Divito Diary, p. I-23, emphasis added).

The notion that McKenzie disclosed to the attorneys for the bank her prosecutorial "inclination" undercuts the very premise of the integrity of criminal investigations and grand jury secrecy. Two weeks later, Kirwan "reported on the latest development[s]" that "we are expecting an indictment in January, probably during the second week." (Divito Diary, p. I-50).

If the impact of these unwarranted disclosures can be minimized

by their purely procedural aspect, then there can be no rationale for what followed. On January 4, 1990, Divito reported:

...Mr. Kirwan called with important news. He spent three hours last night with Assistant U.S. Attorney McKenzie. The following developments emerged: Drogoul intends to charge BNL management with being aware of all the Atlanta branch activities. The deputy general manager in charge is the person to whom the communications would be addressed, even during a meeting in Baghdad. There would not be other defendants besides the personnel from the branch and from a trading company in New York.

McKenzie expects to visit Europe the second half of January. At that time she intends to talk with two of our officials, possibly to refute Drogoul's assertions. According to Kirwan, the trip would inevitably let the indictment slip beyond January 1990.

(Divito Diary, p. I-52, emphasis added).

It is not difficult to understand why Divito perceived this "news" as "important". For one, Drogoul was (and remains) a defendant in a civil lawsuit brought by the bank, a fact which alone should have constrained McKenzie from discussing Drogoul or his intentions with anyone from the bank. Moreover, it has always been the posture of the United States Attorney's office that their investigation of Rome's involvement was exhaustive and thorough. Yet as of December, 1989 and January, 1990, at a time when every responsible agency was inculping BNL-Rome in some fashion, without having been to Italy, or interviewing any of the individuals who Drogoul was

implicating, McKenzie was so wedded to a "Rome as victim" theory that she compromised her investigation by disclosing both government and defense strategy. The accuracy of the information leaked by Kirwan is corroborated by a letter McKenzie wrote to the Federal Reserve on January 9, 1990. In this missive, she praised the work of Examiner Robert Kennedy, and requested that he be allowed to accompany her on a trip to Rome for access to records which will "defeat these spurious claims by the subjects of our criminal investigation." That four months into the investigation, without the benefit of interviews, visits to Rome or review of Italian documents, the lead prosecutor was able to reject as "spurious" the assertions by Drogoul and Von Wedel, suggests a divine knowledge that was denied to the Bank of Italy, the Federal Reserve and the Italian Senate.

The extent to which McKenzie allied herself with BNL is demonstrated no more convincingly than in the following Divito report of February 7, 1990:

At noon I talked with Mr. Kirwan, who reported on the meeting of Drogoul's new attorneys (Williams & Connolly of Washington) with the Assistant United States Attorney. At the meeting it seems they made a very sophisticated presentation, outlining their defense strategy. (Acceptance in substance of the accords undertaken, revenue for the bank, etc.)

(Divito Diary, p. I-90, emphasis added).

This was, without question, an outrage. We do not believe that anyone from

Williams and Connolly divulged the defense strategy to Bruce Kirwan, and that leaves only one candidate. The prosecutor's disclosure of Drogoul's defense strategy to his civil adversaries was merely unethical - her sharing information with a ~~target~~ of a criminal investigation was immoral. For Ms. McKenzie already knew what she had not yet disclosed to Kirwan or Driver - that a combination of Drogoul's assertions and simple common sense had caused others at the Department of Justice to deviate from the line espoused by the Atlanta group. Laurence Urgenson, the head of the Fraud Division, and Peter Clark, an attorney therein, did not adhere to McKenzie's foreclosure of Rome's culpability.

Her knowledge notwithstanding, McKenzie continued to ally herself with the bank, even as against her colleagues in the Department of Justice. Divito met with McKenzie and Arthur Wade in Atlanta at the office of King & Spalding. His report of that meeting reflects his impression that McKenzie

...had the principal aim of solidifying BNL's role as victim in the affair and to confute the expected charges against BNL from Drogoul's defenders.

(Divito Diary, p. I-91).

McKenzie's disclosures to the bank and its attorneys are offensive and unethical when viewed in isolation. Yet their true impact is only measurable by virtue of the political machinery that they set in motion,

and by results achieved thereafter.

It is clear from reading the Divito Diary that the bank's approach to avoid indictment was to appear to cooperate, adamantly deny any complicity, and hold their collective breaths. Based on the reports through February, 1990, the bank had some fair success, as evinced by this February 22, 1990, entry:

In the evening I spoke with Mr. Kirwan to determine clearly the position of the Assistant U.S. Attorney in Atlanta. Kirwan confirmed categorically the solidity of our line and her pro-BNL persuasion. But Drogoul's defenders apparently managed to initiate some pressure around Washington to alter the assessment of the facts to favor their client. He also told me that Drogoul's defenders are also exploring the possibilities of a partial guilty plea.

(Divito Diary, p. I-105, emphasis added).

This rash of unmitigated disclosure, even as to the defendant's intention to plea bargain, continued until March, 1990, when McKenzie told Kirwan that BNL's status as a possible target had re-emerged. Divito's March 5, 1990 report of this event is momentous:

Yesterday evening Mr. Kirwan called to update me on some important and not altogether unexpected developments on the American legal front. In brief, the call from the Justice Department which should have given the go-ahead for the indictment by the Assistant U.S. Attorney...never happened.

On the contrary, she was advised by Ted

Greenberg, acting head of the Fraud Section at the Department of Justice, that it is considered necessary to investigate further, presumably to check on the possible co-responsibility of the bank. This request had the immediate effect of postponing the indictment indefinitely.

To evaluate the impact of this postponement, our attorneys in the U.S. are working with Mr. Bill Hendricks⁹, head of the Washington office of King & Spalding....

(Divito Diary, p. I-112)

As far as the bank was concerned, their approach with McKenzie had failed.

As Divito observed, "[m]y basic impression is that the situation seems to be sliding from the technical-legal context to a more markedly political one. Under these circumstances we cannot preclude the affair evolving towards solutions outside the Justice system." (Divito Diary, p. I-113, emphasis added).

Within seventy-two hours of McKenzie's disclosure to Kirwan, Italian Prime Minister Andreotti arrived in Washington to meet with Attorney General Thornburgh.

While we have never been made privy to the context or content of that meeting, the timing and participants make a coincidence implausible.

It is far more likely that the first in a series of "solutions outside the Justice

⁹ William Hendricks was the head of the Department of Justice Fraud Section up and through August 4, 1989, the day of the raid at BNL. He then left to direct the Washington office of King & Spalding, attorneys for the bank. We have no information that Mr. Hendricks ever worked on the investigation while at Justice, although we think it unlikely that he was unaware of the massive country-wide search of BNL branches. Perhaps it is another in a series of coincidences which seem to emanate from this case.

system" was set into motion.

Their status as a target did not seem to sway Ms. McKenzie either in her conviction of the bank as victim, or in her inclination to provide them with as much information as possible. As Divito reported on March 13, 1990:

...By now, it is clear that the Department of Justice has serious reservations about the preliminary conclusions reached by the local U.S. Attorney. These reservations apply especially to the exclusion of BNL guilt in the affair...This development will reenforce those steps taken to make the Government and the Foreign Ministry aware of the growing importance of political factors in the evolution of the affair.

(Divito Diary, p. I-116, emphasis added).

Four days after this report, the Italian Ambassador Petrignani met with Robin Ross, Edward Dennis and Mark Richard of the Justice Department. Again, the timing of this meeting suggests that the discussion was directed towards a political resolution of the investigation.

Between March 20 and March 22, 1990, Laurence Urgenson and Peter Clark were in Atlanta, meeting with Gale McKenzie about the course of the prosecution. Ironically, our only clue as to the tone and substance of that meeting was provided by Divito, who wrote:

In the evening, Mr. Driver called me. He reported on the first results of the meetings between

Assistant U.S. Attorney Mckenzie and the officials of the Justice Department in Washington.
We are informed that the Justice Department has asked the Assistant U.S. Attorney for a written brief explaining her theories...

(Divito Diary, p. I-122, emphasis added).

While Divito was recording this report, Ambassador Petrignani was meeting with Attorney General Thornburgh, reaffirming the "bank's position as victim..and as an organ of the Italian government." (Divito Diary,p. II-4). In his discussion with Thornburgh, Petrignani emphasized that "incriminating the bank would add insult to injury, and would not be understood at all in Italy, especially in the context of years of collaboration between the two countries in the field of police and judicial investigations." (Divito Diary, p. II-4).¹⁰

The importance of raising the matter to a political level¹¹ was articulated by Divito after the results of McKenzie's meeting with Urgenson and Clark were reported back by Driver.

It is evident that the strategy of cooperating with the Assistant U.S. Attorney is losing its value.
The one already launched of taking advantage of access at political levels appears more promising.

¹⁰ This report reflects a discussion with Petrignani on April 4, 1990, in which the latter recounted his meeting with Thornburgh.

¹¹ In October, 1989, Giampiero Cantoni and Paolo Savona, Chairman and General Manger of BNL respectively, visited the American Embassy in Rome, asserting that they "want to achieve some kind of damage control" and suggested that 'the matter should be raised to a political level.'" This information was cabled from the embassy to the Secretary of State.

given the substantial change in the picture.

(Divito Diary, p. I-123-24, emphasis added).

Four days later, on March 27, 1990, Ambassador Petrignani met with Abraham Sofaer, Legal Adviser to the State Department. Thus, within the three weeks after McKenzie disclosed the target status of the bank, two upper level Italian political officials, Andreotti and Petrignani, descended upon the State and Justice Departments to lobby on behalf of BNL, invoking Sino-American political relations, and the negative impact that an indictment of the largest Italian state bank would have on those relations. In addition, based on the defense strategy improperly disclosed to the bank, BNL retained the services of William Rogers, Roger Clark and David Whitescarver of Rogers & Wells, to complement the impact of the advice already provided by Griffin Bell¹² and William Hendricks of King & Spalding.

The techniques suggested by former Secretary of State Rogers clarify how the Bell-Rogers team was able to turn a "target" back into a "victim". As memorialized by Divito:

Bill Rogers confirmed his interest in taking the BNL Atlanta case. To avoid giving the impression that we were changing attorneys, he suggested that Rogers & Wells appear as the Washington attorneys not only of BNL, but also of the

¹² Officials of the bank met with Griffin Bell in Washington on April 4, 1990, the same meeting at which Petrignani disclosed the results of his meetings with Thornburgh, Ross, Dennis, and Sofaer. (Divito Diary, p. II 2-3).

Italian government. This would underscore the importance the latter attaches to the case and its possible repercussions on relations between the two countries. Mr. Rogers laid out a technical line of defense, based on the following political and legal points:

- 1) the BNL affair did not cause monetary losses to American agencies, companies, or persons; therefore corporate criminal liability does not apply;
- 2) If there are responsibilities on the part of the bank's central management, the case would come under the jurisdiction of the Italian judiciary,
- 3) The rules of corporate criminal liability do not apply, because BNL is state property.
- 4) If there has been negligence on the part of the BNL, then there has also been negligence on the part of the American authorities.
- 5) The BNL has already been punished. Why hit it again?
- 6) The District Attorney is conducting the same investigation as the Italian judiciary and the Parliament.

(Divito Diary, p. II 6-7, emphasis added).

This policy of pressure by Italian officials, bolstered by the representation of the bank by former highly-placed government officials (Rogers, Bell, Hendricks) had the desired result. Two months after re-targeting the bank, without any additional investigation or interviews of BNL

personnel,¹³ Divito reported

Late in the evening Mr. Driver called to tell me that the Assistant U.S. Attorney returned from Washington and told Mr. Kirwan that BNL is no longer a target of indictment, so long as the Italian magistrate does not intend to prosecute it.

(Divito Diary, p. II-65).

Even with this victory in hand, McKenzie extended her advocacy of BNL to insure that there would be no undercutting of her position by the Italian investigators. In September, 1990, Senator Carta, the chairman of the Italian investigative committee, came to the United States with Enrico Zanelli, the investigator for the committee. Although the source of the information is unclear, Divito was able to report that "[McKenzie] intends to participate again at the final meeting, to safeguard her own interpretation of the affair, especially to see BNL portrayed as a victim before the Italian Senate Committee." (Divito Diary, p. III-74, emphasis added).¹⁴ This meeting went forward on September 21, 1990, with McKenzie, Urgenson and Arthur Wade

¹³ The one exception to this of which we are aware is the re-interview of Therese Barden on April 12, 1990, at which she tells Arthur Wade, among other details, that Drogoul told her Florio had authorized the excess lending to Iraq.

¹⁴ In their final report, the Italian Senate conspicuously noted the lack of cooperation from the American prosecutor, Gale McKenzie. Apparently, McKenzie resisted providing information, documents or witnesses on the grounds that it would compromise the integrity of her investigation. Undoubtedly, Ms. McKenzie was being unintentionally ironic in this assertion, since she shared information with the bank itself, and, as noted, a number of American agencies.

in attendance, together with Senator Carta, Zanelli and Ambassador Petrignani. While the substance of that meeting remains largely unknown, five days later Attorney General wrote to Representative Henry Gonzalez. Gonzalez, of course, was publicly decrying the knowledge and awareness of both the Italian and United States governments of the BNL-Iraqi transactions, and initiating an investigation into the matter by his Committee on Banking, Finance and Urban Affairs. The letter from Thornburgh to Gonzalez asserted Justice's "strong objections" to his investigation and referred to BNL as a "sensitive case with national security concerns."¹⁵ Again, the timing of this letter¹⁶, five days after Petrignani made his strongest pitch for the depiction of "BNL as victim", evokes serious, credible concerns about the political

¹⁵ This concern for national security is rendered laughable by the consistent loquaciousness of Gale McKenzie. The then-lead prosecutor, who in 1989, expressed her concerns that there was a leak in the secrecy of the proceedings, shared information with everyone but the defendant: the State Department, the Department of Agriculture, the Federal Reserve Bank, the White House and of, course, the representatives and attorneys of BNL-Rome.

¹⁶ The day before Thornburgh's letter, September 25, 1990, Divito made the following report:

I talked with the law office of Rogers & Wells to define a strategy for the upcoming House Banking Committee hearings. Mr. [William] Rogers had talked with BNL's President about it, and they concluded that it was in the bank's interest to delay or cancel them altogether, especially because they might interfere with the judicial proceedings.

(Divito Diary, p. III-84, emphasis added).

The fact that the following day, the United States Attorney General wrote to the committee chairman seeking just that relief might well be another of those "BNL coincidences".

nature of this prosecution.

In January, 1991, with not one representative of any investigative agency having travelled to Rome¹⁷, the scheduled trip having been canceled by Thornburgh, a stream of BNL witnesses were paraded into the grand jury to assert their ignorance, and to provide the foundation for a Rome-less indictment.

We are not privy to the agenda that motivated the Atlanta prosecution team at the outset, or in the considerations that compelled the Justice Department to embrace a prosecution theory rejected by every other entity which investigated this matter. We see only that which the salient facts and our reason place before us:

1. BNL-Rome was provided with details regarding prosecution tactics, defense strategy, and other information to which no target should ever be privy.
2. Incredible political pressure was brought to bear by high-ranking members of the Italian government upon those charged with the decision as to whether to prosecute BNL.
3. If the prosecution concluded that the bank shared complicity with Atlanta, there would be no American prosecution. There would be no mail fraud, no wire fraud, no money laundering, and no basis for a majority of the regulatory counts. In essence, this high-profile, politically-charged prose-

¹⁷ Indeed, more trips were made by Italian political representatives to the United States to plead BNL's case than were made by Department of Justice prosecutors to investigate the legitimacy of those very assertions.

cution would become nothing more than an Italian bank fraud case, properly subject to Italian jurisdiction.

4. If Rome was aware, the concept of the Iraqis as criminal masterminds, subscribed to enthusiastically after the invasion of Kuwait and the onset of the Gulf conflict, would have disappeared.

We are unable to dispositively establish any of the foregoing as the motive for the errant course followed by Gale McKenzie and her superiors at Justice. However, they are sound, reasonable explanations for an otherwise inexplicable course of pre-indictment conduct, and for the suppression of exculpatory evidence which continues to this date.

B. The Suppression of Evidence.

In January, 1991, Gale McKenzie requested, and received, permission from the Department of Justice to grant immunity to Paul Henderson. Henderson was the general manager of Matrix Churchill Ltd., the British tool manufacturer. This company, purchased and directed by the Iraqi Safa Al-Habobi, is alleged to have been the very hub of the Iraqi arms procurement network. In addition, Matrix Churchill was the beneficiary of several letters of credit from BNL-Atlanta, which the government has charged were unauthorized, and thus illegal. As a consequence of his position, Mr. Henderson had occasion to be in constant contact with several of the Iraqis charged as co-conspirators: Habobi, Sadik Taha, Hassan Raja Ali, and Fadel Khadoun, among others. He also met and talked with Drogoul and Paul Von Wedel during their trip to England. All things considered, Henderson is a

critical repository of information regarding the events charged in the indictment. Perhaps it was this perception which induced McKenzie to seek and obtain immunity for Henderson.

Mr. Henderson came to the United States while the grand jury was hearing evidence in this case, and was debriefed for two days by McKenzie, F.B.I. Special Agent William Campbell and an agent from the United States Customs Service. Henderson was not called before the grand jury, and he returned to England, where he was charged and tried for his ostensible role in the Iraqi procurement effort.¹⁸

We have recently visited with Mr. Henderson, where he apprised us of the information he had revealed to Gale McKenzie, and the other government representatives with whom he met. He provided her with a detailed and concise framework of the Iraqi procurement network, its international reach, and the identity of the participants. The critical aspect of his debriefing, however, is his recounting of conversations he had, in 1989, with Safa al Habobi, a charged co-conspirator in this indictment. Habobi told him that Rome was fully aware of BNL-Atlanta's dealings with Iraq, had approved of its dealings, and that they were an extension of a government-to-government agreement between Italy and Iraq. His statements to McKenzie

¹⁸ This trial was aborted based upon the dual revelation that Henderson had been furnishing information to British intelligence while employed by Matrix Churchill, and that the Ministry of Trade and Industry was fully aware of the procurement network, and approved the export of dual use products to Iraq.

effectively dispelled any concept of BNL-Rome as an unwitting victim of Drogoul's "rogue" operation. Given her stout adherence to the BNL-victim theory of prosecution, it is little wonder that McKenzie did not put Henderson into the grand jury. We concede that the current state of the law imposes no obligation for her to present exculpatory evidence to the grand jury.

It is a different story, however, when that same exculpatory evidence is suppressed after the voting of the indictment. The withholding of evidence favorable to an accused violates his constitutional due process rights. Brady v. Maryland, 373 U.S. 83, 83 S. Ct. 1194 (1963); Jacobs v. Singletary, 952 F.2d 1282 (11th Cir. 1992). We submit that the same political pressure which produced the pre-indictment chicanery set forth above, compelled the willful and intentional nondisclosure of Paul Henderson's statement. The information he provided to McKenzie goes directly to the very heart of the largest portion of the indictment, undercutting the pleaded allegation that BNL-Rome was knowingly defrauded. Since the government will be offering countless co-conspirators statements in an effort to evince the fraud, Habobi's statements to Henderson would be admissible under the doctrine of verbal completeness embodied in F.R.E. 106 and 611(a). If Henderson's testimony were believed by a jury, it could singly result in an acquittal on those counts predicated on Drogoul's defrauding of the bank. It's materiality, a requirement for the finding of a Brady violation, is thus unquestioned. Aldridge v. Dugger, 925 F.2d 1320, 1325 (11th Cir. 1991).

The relevance and materiality of Henderson's statements to the charges contained in the indictment are so manifest that inadvertent nondisclosure was not possible. Our perception of the insidious nature of thus suppression is bolstered by the fact that on April 23, 1993, McKenzie unilaterally revoked Henderson's grant of immunity, thus exposing him to arrest and prosecution if he attempts to come to the United States to testify.¹⁹

When the suppression of this evidence is viewed in conjunction with the events described at length above, it is clear that the government has gone to substantial and improper lengths to retain the status of BNL-Rome as the unwitting dupe of Christopher Drogoul. They have done so in the face of reason, contrary evidence and conclusions by reputable agencies, and in so doing have violated the defendant's constitutional rights and their own obligation to adhere to the highest standard of fairness and justice.

C. The Conflict Of Interest.

On December 15, 1992, the Banca Nazionale del Lavoro sued the United States for monies owed them by virtue of the Iraqi defaulting on loans guaranteed by the Commodity Credit Corporation. The suit was instituted by the law firm of King & Spalding, and is being defended by the

¹⁹ We will shortly be submitting a motion to compel the government to reinstate Henderson's immunity grant so that we may call him to testify on behalf of the defense.

Department of Justice.

In a display of unmitigated institutional arrogance, the defendant United States moved for dismissal and, in the alternative, for a stay of the proceedings pending the outcome of the criminal trial. The government's rationale in so moving is so byzantine that it is worth quoting at length:

The focus of the September trial will be whether Mr. Drogoul defrauded BNL or whether BNL, in fact, knew and approved of the illegal Iraqi loans...Judge Shoob..."conclude[d] that official at BNL-Rome were aware of and approved Mr. Drogoul's activities."...Judge Shoob also noted that, if a "victim" of Mr. Drogoul's activities, BNL might be able to recover on the CCC guaranteed loans to Iraq...

Judge Shoob's remarks bring into focus the close and potentially conflicting relationship between this action and the criminal trial of Mr. Drogoul. Mr. Drogoul's defense is that BNL authorized his criminal activity. In other words, rather than being a "victim" of the fraud, BNL is the perpetrator. After close involvement with this case, Judge Shoob concluded that BNL did approve Mr. Drogoul's activities, with a clear inference that if BNL were not the "victim," it might not be able to recover on the portion of the defaulted loans guaranteed by the CCC--the loans at issue here.

(government motion, p. 10-11, emphasis added).

Remarkably, the government invoked the findings of the Italian Parliament, before whose investigators Gale McKenzie so nobly protested BNL's innocence, as well as an oblique reference to "certain members of Congress".

(Id. at 11). Finally, in a equivocal tone that stands in stark contrast to the stridency with which Justice (criminal) has defended the bank, the government asserted:

Judge Shoob, the Italian Parliament, and certain members of Congress may be wrong. Nevertheless, it is evident that there is more than idle speculation that evidence might evolve in Mr. Drogoul's trial further implicating BNL and raising obvious conflicts...

(government motion, p. 11).

It is not difficult to read between the lines etched in these papers by the government. If the bank was complicit, the United States will not have to pay. Thus, it is in the interests of the United States to prove that Rome was not defrauded. But if the government proves that in the civil trial, they can't possibly simultaneously be trying to prove their charges in the indictment, namely, that the bank was defrauded. In essence, that would mean that Drogoul would go free, and that, apparently, is not in the interests of the United States.

In every compendium of professional responsibility, it is well-ensconced that "[e]very lawyer owes a solemn duty to uphold the integrity and honor of his profession...and to strive to avoid not only professional impropriety but also the appearance of impropriety." State of Georgia Code of Professional Responsibility, EC 9-6. In addition, it is unremittingly clear that "[t]he professional judgment of a lawyer should be exercised...solely for the

benefit of his client and free of compromising influences and loyalties. Neither his personal interests, the interests of other clients, nor the desires of third persons should be permitted to dilute his loyalty to his client." State of Georgia Code of Professional Responsibility, Rule 3-105, EC 5-1.

We are unable to make sense of the government agenda in either its prosecution of Drogoul or its defense of the civil lawsuit. We only know that to prevail on both requires proof of absolutely contradictory positions. As such, there are potential conflicts which clearly and objectively create the appearance of impropriety. Will the government prosecutors not be as committed to their proof since proving BNL's victim status will cost the government \$340 million? Will the information obtained through McKenzie's close relationship with the bank, and the "exhaustive" compilation of information be disclosed to BNL's ultimate detriment in the civil case? Will Paul Henderson, who was ignored and then banished by the prosecutors, be called to testify on their behalf at the civil trial? Has the government, in its investigation of the civil case, asked the prosecutors to furnish all information that demonstrates that Rome was not defrauded, or disclosed such information compiled by them to the prosecutors, putting both in an untenable position. While it is certain that none of these problems seriously prejudice the defendant, that is largely beside the point. The philosophical underpinnings of this canon of ethics is the perception that "justice can be obtained through our legal system." EC 9-1. If the government is allowed to give with

one hand and take with the other, there will be an erosion of the public confidence in the system of justice. If the same entity, the Department of Justice, is allowed to allege and prove Rome's ignorance and innocence in order to obtain a conviction, and then allege and prove BNL's complicity in order to save itself millions of dollars, we will be condoning its efforts to get the benefit of a very dubious bargain.

CONCLUSION

The statute which provides for the appointment of an "independent counsel", 28 U.S.C.A. § 591, is a complex and lengthy piece of legislation. Fortunately, the only provision which is relevant to this application is concise and straightforward:

(c) ...The Attorney General may conduct a preliminary investigation in accordance with section 592 if -

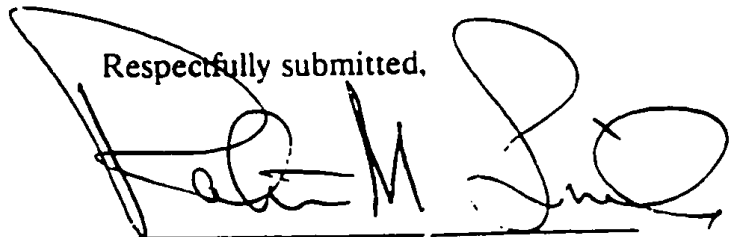
(1) the Attorney General receives information sufficient to constitute grounds to investigate whether any person [Drogoul and/or BNL]...may have violated any Federal criminal law...and

(2) the Attorney General determines that an investigation or prosecution of the person, with respect to the information received, by the Attorney General or other officer of the Department of Justice may result in a **personal, financial, or political conflict of interest...**

(emphasis added).

WHEREFORE, we call upon the court, based upon the foregoing, to disqualify the Department of Justice from investigating and prosecuting this indictment and/or to request the Attorney General to initiate a preliminary investigation of the events surrounding this prosecution; or, in the alternative, to order a hearing on the issues raised herein, at which time the government shall produce to the court, for its in camera inspection, all materials and documents which are relevant to the issues raised. In addition, we request that Assistant United States Attorney Gale McKenzie be disqualified from participation in the investigation and prosecution of this indictment. Finally, we seek a stay of the disposition of the government's motion in limine to preclude evidence of prosecutorial decisionmaking pending the determination of this motion.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Robert M. Simels', written over a horizontal line.

Robert M. Simels
Attorney for Christopher Drogoul

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BNL CHRONOLOGY

The following is a list of the critical events that transpired between August 4, 1989 and the present, and which impact on the defendant's motion for disqualification and dismissal. The sources referred to throughout are (1) the Memorandum of Federal Reserve Bank Examiner Madeline Marsden ("Marsden Memo"), the Report of The Independent Counsel, submitted by Judge Frederick Lacey (the "Lacey report"), the Report of the Senate Select Committee on Intelligence ("SSCI"), the diaries of senior BNL bank official Paolo Divito ("Divito Diary"), and the Appendices to the Hearing Before the House Committee On Banking, Finance and Urban Affairs, May 21, 1992.

| <u>DATE</u> | <u>EVENT</u> | <u>SOURCE</u> |
|-------------|--|---------------|
| 8/4/89 | Raid on BNL-Atlanta | |
| 8/4/89 | Federal Reserve examiners search BNL offices in Chicago, New York, Los Angeles and Miami. | Marsden Memo |
| 8/5/89 | McKenzie, F.B.I and Fed. Res. V.P. Kelley meet with BNL head auditor from New York and official from Rome. | Marsden Memo |
| | Drogoul meets in London with Taha, Ali Fadel, Kadhumi, and Osama Hammadi | |
| 8/6/89 | Federal officials meet with Louis Messere, auditor from New York and auditor from Rome. - meeting on same day between Georgia State auditors, Federal Reserve officials and senior officials from Rome | Marsden Memo |
| 8/7/89 | Independent examination of BNL(A) begun by Reserve examiners - Forrester of Federal Reserve meets with United States Attorney Barr Drogoul meets with Pietro Lombardi (BNL) in New York; travels back to Atlanta and is fired by D'Addosio | Marsden Memo |
| 8/8/89 | Drogoul meets with Umberto D'Addosio, Petti, Bacigalupo Franco Raffo, Louis Messere and Bruce Kirwan (BNL), attorney for the bank. | |
| 8/9/89 | Informational meeting; officials from Bank of Italy, Forrester, Ed Willingham (U.S.D.A.), Gale McKenzie, Zane Kelley and Bill Estes - meeting held with Franco Raffo and Umberto D'Addosio of BNL-Rome. | Marsden Memo |

**Officials of BNL-Rome travel to Baghdad
and meet with officers of C.B.I.**

| | | |
|------------------|---|---------------------|
| 8/10/89 - | Christopher Drogoul debriefed by F.B.I. Special | F.B.I. 302 |
| 8/11/89 | Agent Hardy as to details of BNL operations - Franco Raffo of BNL-Rome and Bruce Kirwan are present during debriefing. | |
| 8/15/89 | Drogoul meets with D'Addosio and Raffo of BNL-Rome. | |
| 8/16/89 | Drogoul meets with D'Addosio and Raffo of BNL-Rome, and Fratini and Lanari (Bank of Italy) | |
| 8/17/89 | Federal Reserve Senior Examiners Bob Kennedy and Marsden meet with McKenzie, F.B.I. Agent Hardy, and attorneys for Von Wedel (Martin) - indication = Von Wedel will plead guilty | Marsden memo |
| 8/18/89 | Federal Reserve Examiners Kennedy and Marsden meet with McKenzie, F.B.I., and Ted Lackland and Eva Pappas, attorneys for Drogoul. | Marsden memo |
| 8/18/89 | Drogoul meets with D'Addosio, Raffo, Fratini - Leigh New and Amedeo DeCarolis also present | |
| 8/21/89 | Drogoul meets with D'Addosio and Raffo - Paul Von Wedel and DeCarolis also present | |
| 8/24/89 | Drogoul meets with D'Addosio, Carpinelli, Kirwan and Raffo | |
| | Federal Reserve Examiners Kennedy and Marsden meet with McKenzie, Hardy and attorney for Leigh New - Walter Zunic, Examining Officer with NY FRB returns to NY to Atlanta to talk with D'Addosio | Marsden Memo |
| 8/25/89 | Estes, Zunic, Duffy, Kennedy, Marsden and Ga. state examiners meet with D'Addosio to discuss investigation | Marsden Memo |
| 8/28/89 | Christopher Drogoul debriefed by S.A. Hardy | F.B.I. 302 |
| | Estes, Kennedy, and Marsden meet with <u>McKenzie, Hardy and Bruce Kirwan to "discuss timing of pleadings/indictments and contradictions in Drogoul's statements.</u> | Marsden memo |
| 8/31/89 | Federal Reserve Report "Uniform Report of Examination for Branches and Agencies of | Lacey Report |

Foreign Banking Organizations*

- concluded that BNL-Rome was not diligent in its monitoring of BNL(A)

9/89 **OIG releases report criticizing operation of C.C.C. program**

At NAC meeting, U.S.D.A. proposes interim \$400 million in C.C.C. credits, with another \$400 million to follow if Iraq exonerated in BNL scandal

9/5/89 **Kennedy meets with Art Wade and Bill Stover of U.S.D.A. to discuss BNL C.C.C. portfolio
- Forrestal, Willingham, Smith and Estes meet with D'Addosio and Croff of BNL-Rome**

Marsden Memo

9/7/89 **Estes, Kennedy and Marsden meet with Mela Maggi with Hardy and McK.**

Marsden memo

BNL releases figure of \$2.64 billion as total of unauthorized credits to Iraq, of which \$920 million is undisbursed.

9/8/89 **Task Force learns from Alan Friedman of link between BNL(A) financing to Iraq and Condor II - specifically learn about Matrix Church. and Lummus-Crest
- McK. meets with Estes, Kennedy, Marsden, Hardy, Richard Horton (U.S. Customs) and Tim Davis and Gary Sherrill, investigators at D.O.D.
- BNL(A) asked to provide all files on Matrix and Lummus-Crest**

Marsden memo

9/11/89 **Task Force meets with Kirwan to discuss weapons sales allegations
-Kirwan promises to provide files on Matrix, TDG Technology, Lummus, Assoc. Instruments of Georgia, Technoexport, XYZ Options and CE Kintex**

Marsden Memo

**CD debriefed by Estes of Fed -
- CD tells about Baghdad & Monaco
- also about calls for Iraqi business directed to branch by Monaco
- Picero in Rome knew BNL(A) using "extinct credit lines" to finance other business
- talks about Galiano and Costa**

**Notes of
Bill Estes of
Federal Reserve**

9/11/89 **CD interviewed by I.R.S. agent Brackin**

Brackin Memo of Interview

- discussed kickbacks to VonWedel
- denied receiving payments, bribes or kickbacks

| | | |
|---|---|------------------------------------|
| 9/15/89 | Task force (Kennedy, Hardy and McK.) meet with Kirwan and reps. of Bank of Italy - discuss CD's allegations against other BNL employees - group briefed by D.O.D. on what they learned from Pentagon about Matrix and Lummus. Group learns that Safa Al-Habobi is involved in TDG. | Marsden Memo |
| Lackland writes to McKenzie providing names of BNL-Atlanta customers and contact names. | | |
| 9/15/89 | D.I.A. report containing speculation that "the B.N.L. mechanism was but a part of a larger NATO strategy to ensure an Iraqi victory in its war w Iran | SSCI Report |
| 9/19/89 | Article appears in National Intelligence Daily (NID) detailing relationship between BNL and Iraq procurement network | |
| 9/21/89 | Lackland writes to McKenzie - provides info. re: Summit Bank, TelWar Intl., Lummus Crest, Sudbury, Matrix Churchill. XYZ Options - also provides L/C info. Customs Service memo to U.S. Attorney Barr - BNL suspected "to have provided loans to various U.S. firms for the illegal export to Iraq of missile related technology to be used in the Condor II project. | |
| 9/29/89 | McKenzie submits hypothetical questions to USDA reps regarding C.C.C credits - refers to the bartering for arms of C.C.C. exports - refers to Italian and Iraqi political relations | Appendix, May 21 part 2, p. 215 |
| 9/30/89 | Task force meets to discuss timetable of indictments - reflects impossibility of meeting Barr's October 19 deadline for indictments of CD and VonWedel. | |
| 10/89 | Fed. Reserve internal memo - Thomas C. Baxter - details conversation between Virgil Mattingly and Gayle McKenzie - reflects that McKenzie confirmed that Matrix | |

Churchill made missile casings and that XYZ sold missile technology to Iraq
 - McKenzie also concerned about a leak - either BNL-Rome or Bank of Italy
 - McKenzie focused on BNL-Entrade

10/89 Cable from U.S. Embassy/Rome to Sec. of State
 - Cantoni and Savona came to Embassy to express concerns about BNL matter; suggested that "the matter should be raised to a political level"
 - "want to achieve some kind of damage control" Appendix, May 21, part 1, p. 326.

10/89 C.I.A. report reflecting that BNL-Rome "had directed a foreign company to BNL-Atlanta to do business in Iraq." Source of this information concluded that BNL-Rome "must have known"
 - also C.I.A. report containing statement that "many international bankers familiar with the BNL situation strongly believe" that BNL was aware. SSCI Report

10/3/89 NSD-26 signed by Bush - calls for increased financial and political harmony between U.S. and Iraq.

10/5/89 Art Wade briefs USDA group comprised of CCC Treasurer Jim Little, CCC Asst. Treasurer Sally Nunn, Assoc. Gen. Counsel Thomas Conway, OGC Attorney Kevin Brosch, Larry McElvain on status of investigation
 Appendix, May 21 part 2, p. 213
 Reps. of USDA meet with Iraqi delegation in Washington re: CCC
 - Iraqis admit "after sale services"

11/6/89 Sec. of State Baker meets with Iraqi Foreign Minister Ariz. Ariz denies Iraqi complicity in BNL scandal. Appendix, May 21 part 2, p. 222.

10/08/89 American embassy in Baghdad reports on discussion with Nizar Hamdun re: CCC program
 - Hamdun threatens that if U.S. is not interested in participating, Iraq will take its business elsewhere. Appendix, May 21 part 2, p.234.

10/10/89 Italian Weekly reports that Secretary of State Baker is receiving weekly briefings on BNL case.

10/11/89 Meeting in Atlanta with McKenzie, Larry McElvain of C.C.C. and Kevin Brosch of U.S.D.A.
 - McKenzie highlights illegal conduct of Iraqis, as well as kickbacks paid to BNL(A) officers. Memo from McK. to File 6/16/92
 Appendix, May 21 part 2, p. 243.

- also refers to possible diversion of CCC exports.

State Department memo from Richard McCormack states "the unfolding BNL scandal is directly involved with the Iraqi CCC program and cannot be separated from it."

10/12/89 Alan Raul meets with Richard Crowder regarding BNL/CCC Appendix, May 21 part 2, p. 250.

BNL, by King & Spalding, file civil RICO action against Drogoul and Paul Von Wedel.

10/13/89 State Department memo - it now appears that at a minimum, elements of the Government of Iraq knew of the illegal dealings of the BNL... Appendix, May 21 part 2, p. 262

- "...the BNL's activities with Iraq may have led to diversion of CCC guaranteed funds from commodity programs into military sales..."
- U.S.D.A.'s Brosch noted that the U.S. Attorney said there was some indication that diverted funds (and possibly direct bank lent funds were used to procure nuclear related equipment..."
- USDA expectations are that the investigation could "blow the roof off the CCC"

10/16/89 U.S. Treasury attache in Rome (Dacey) suggests that profits from scheme "earmarked for Italian Socialist Party" - evokes practice of "illicit political financing derived from the division of stewardship of the various publicly owned institutions between various political parties." Lacey Report

Raul meets with Mike Young, Deputy Legal Advisor at State at behest of Sofaer Appendix, May 21 part 2, p. 250
- discuss Iraq, "because, at this point, State was very interested in pressing forward with the credits for Iraq, while USDA and the NAC were more anxious about it."

10/20/89 Memo from Director, Strategic Investigations Division of Treasury Dept. to Asst. Commissioner of Office of Enforcement
- BNL suspected to have provided loans to various firms for export of missile related technology for use in Condor II project.

10/26/89 Talking Points memo to Secretary of State Baker urging quick approval of additional \$1 billion in C.C.C. credits

- note from Baker to U.S.D.A. head Clayton Yeutter: "I think we're seeing it the same way you guys are."
- on same date Near East Affairs Undersecretary Kelly warns Baker "our ability to influence Iraq policies...will be heavily influenced by the outcome of the C.C.C. negotiations"

Alan Raul, General Counsel for USDA meets with Steve Danzansky of White House, Grady of OMB, Robin Ross of DOJ, Nick Rostow of NSC and John Schmitz of White House counsel's office

- discuss Iraqi situation and NAC process.

Appendix, May 21
part 2, p. 250

10/30/89 Letter from Allan Raul, General Counsel to U.S.D.A to Stephen Danzansky, Deputy Asst. to President, covering issue paper prepared by Foreign Agricultural Service (FAS) regarding C.C.C. program

- Raul offers additional information on this and "further information on the situation with [BNL].

Appendix, May 21
part 2, p. 281.

11/3/89 Lackland writes to McKenzie re: L/C's

Meeting of N.A.C. to consider U.S.D.A request for additional \$1 billion in C.C.C. credits to Iraq.

11/6/89 C.I.A. Report - "Iraq-Italy: Repercussions of the BNL-Atlanta Scandal"

- details Rome denial - "although BNL official in Chicago claims he notified Rome and New York..."
- report not disseminated to U.S.D.A.

State Department memo sent to Eagleburger

- Baker had determined that policy considerations warranted support of full \$1 billion of C.C.C. guarantees to Iraq.
- memo recommends that Eagleburger telephone Treasury and OMB and urge that NAC alternate take place as soon as possible to approve U.S.D.A.'s program for Iraq.

11/7/89 Letter from Raul to Danzansky forwarding materials for the NAC meeting

Appendix, May 21
part 2, p. 338

Raul discusses BNL investigation with Robin Ross of DOJ

Appendix, May 21
part 2, p. 251.

11/8/89 Acting Secretary of State Eagleburger writes Sec. John Robson/Treasury urging support of the \$1 billion C.C.C. credits to Iraq.

Appendix, May 21
part 1, p. 299

NAC deputies meeting - rep. of State (Kimmit) states that to "terminate the CCC program in Iraq would clearly run counter to the President's intention..." Appendix, May 21 part 1, p. 305

- Treasury rep records: "absent compelling agricultural export and foreign policy interests this proposed program probably would not go forward."

- NAC approves U.S.D.A. program in two \$500 million tranches

11/89 Lackland sends lengthy letter to McKenzie detailing extent of Drogoul activity - fully explains "gray book".

11/89 Jay Bybee, Assoc. Counsel to Bush, calls McKenzie to discuss BNL.

11/9/89 McKenzie faxes copies of newspaper articles to Jay Bybee of White House - articles concern arms and procurement

Appendix, May 21, part 2, p. 319.

11/22/89 McKenzie memo to Barr asserting "no evidence that any BNL employee or officer outside Atlanta had knowledge of any portion of the schemes ...sufficient to warrant criminal prosecution"

Lacey Report

12/89 C.I.A. report, citing press articles that the Italian Treasury Minister had confirmed in testimony that "several employees...including one high-level official" knew of BNL-Atlanta's activities"

SSCI Report

12/6/89 Alan Raul advises USDA Deputy Sec. Parnell re: status of BNL investigation

Appendix, May 21 part 2, p. 251

12/7/89 Lackland in contact with I.R.S. Agent Brackin

Brackin Memo of Telephone Contact

McKenzie writes to main DOJ raising possibility of criminal involvement of Taha, Ali, Al-Dulaimi, and Al-Habobi

Lacey Report

Memo from John L. Kuray to Virgil Mattingly of Federal Reserve

Appendix, May 21 part 2, p. 384

- confirms that Atlanta investigation is focusing on Iraqi criminal behavior
- Iraqis knew that letters of credit were not authorized
- Iraqis assisted in concealing letters of credit from BNL-Rome

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|----------|--|--------------------------------------|
| 12/11/89 | Alan Raul advises USDA Dep. Sec. Parnell re; status of BNL investigation | Appendix, May 21 part 2, p. 250. |
| 12/14/89 | Italian Minister Carli reports to Italian Senate that BNL-Rome had some knowledge of Drogoul activities | Lacey Report |
| 12/15/89 | Divito: receives reports from meeting in Atlanta between BNL delegation (D'Addosio, Frick, Garrone, Pedretti, Driver) and McKenzie - <u>no one outside Atlanta going to be indicted</u> | Divito Diary p. 1-22 |
| 12/19/89 | Lackland in contact with I.R.S. Agent Brackin | Brackin Memo of Telephone Contact |
| 12/21/89 | Alan Raul <u>briefs Jay Bybee in White House counsel's</u> office regarding Iraq - USDA-OGC has prepared paper for Senate Agriculture Committee on Iraq - <u>Bybee indicates paper is okay for</u> <u>transmission to hill</u> | Appendix, May 21 part 2, p. 252 |
| 1/90 | Giacomo Pedde, Mario Nesi, Francesco Bignardi, Luigi Cardini, Augusto Calzolari, Ettore Bentsik, Bruno Ginella, and Piero Stampi all indicted in Italy for financing an illegal arms network to Iran. | |
| 1/90 | C.I.A. report which called into question public allegations by the Italian Treasury Minister that many high-level BNL employees were involved in the scandal but alleged information strongly implying that one particular BNL-Rome official knew of Drogoul's illegal activities. | SSCI Report |
| 1/3/90 | DiVito: calls Bruce Kirwan who <u>reports</u> on the latest developments - indictment expected by second week of January - Kirwan discloses that USAO considering indictment of Pierre Drogoul | Divito Diary p. 1-50 |
| 1/4/90 | Divito: Kirwin calls with "important news" - he spent three hours w/McKenzie - <u>Drogoul intends to charge BNL management with being aware</u> <u>of all Atlanta branch activities</u> - <u>deputy manager in charge (Monaco) is being inculpated</u> <u>by Drogoul</u> - no other defendants other than bank personnel and Entrade - McKenzie expects to come to Europe in Mid-January to talk to BNL officials, "possibly to refute Drogoul's assertions" | Divito Diary p. 1-52 |

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| 1/4/90 | Lackland in contact with I.R.S. Agent Brackin | Brackin Memo of Telephone Contact |
| 1/9/90 | McKenzie letter to Fed. Reserve praising Kennedy - "anticipated indictments early next month" - still planning to go to Rome for access to records which will defeat <u>"spurious claims by subjects of our criminal investigation"</u> | |
| 1/12/90 | <u>Jay Bybee</u> of White House tells Raul to give him a call if there are any significant developments regarding Iraq | Appendix, May 21 part 2, p. 252 |
| 1/20/90 | Geneva Accord - Rome guarantees payment of MTL's | |
| 1/24/90 | USDA-OIG informs Raul that criminal investigation does not entail any counts involving USDA or CCC Basic case involves "bank fraud" Alan Raul calls Robin Ross at DOJ to check whether "there is anything new regarding Atlanta criminal investigation" | Appendix, May 21 part 2, p. 252 |
| 1/28/90 | Treasury Dept. memo - refers to USAO's intent to bring initial indictments in February 1990. | |
| 1/31/90 | Letter from Jack Duggan of C.I.A. to David Kunkel at U.S.D.A. - releasing November 1989 memorandum - <u>"managers at BNL headquarters in Rome were involved in the scandal"</u> - "no evidence that Baghdad misused C.C.C. credits" | |
| 2/90 | John Kelly, Under Secretary of State for NESA writes memo - wants to approve second \$500 million tranche - "...need to move quickly to repair the damage to the U.S.-Iraq relationship by getting this critical program back on track" State Dept. memo to Treasury Dept. - calls for NAC meeting to discuss release of 2nd tranche - Kelly: "U.S.D.A.'s present delay in releasing the second tranche damages the interests of U.S. producers as well as our political relationship with [Iraq]" | |
| 2/4/90 | Fed. Reserve Internal Memo - Ernest Patrikis - refers to trip to Italy by investigators | Appendix, May 21 part 2, p. 434. |

put off because of BNL concerns with Italian press

- trip to Istanbul put off by Thornburgh
- Entrade willing to pay a \$1 million penalty
- "Iraqis are willing to sacrifice one individual to criminal justice system--"

2/7/90

Divito: talked with Kirwan, who reported on the meeting of Drogoul's new attorneys (Williams and Connolly) with the United States Attorney

- seems they made a sophisticated presentation

Divito Diary
p. I-90

2/8/90

McKenzie and Wade meet with Divito at King & Spalding

- "...investigating attorney proceeded to verify a series of elements with the principal aim of solidifying BNL's role as victim in the affair, and to confute the expected against BNL from Drogoul's defenders
- impression was that USA "subscribed in the broadest way to the BNL positions and is trying to support them point by point..."

Divito Diary
p. I-91

2/9/90

State Dept. cable to U.S. embassy in Baghdad

- would prefer to wait on 2nd tranche until after Atlanta indictments

Memo from Eagleburger to April Glaspie

- State Dept. proposes that DOJ prepare list of questions re: BNL for submission to Iraqis
- Eagleburger states that U.S.D.A. attache in Baghdad could be apprised of strategy, but should not tell his colleagues in Washington.

2/12/90

Peter Clark of DOJ advocates BNL-Rome criminal culpability to others at Justice

2/13/90

Divito: "In Atlanta they have begun the interviews of the witnesses with the Assistant U.S. Attorney...Our attorneys, Driver and Kirwan, are attending the interviews

Divito Diary
p. I-97

2/15/90

Divito: USAO interview of BNL witnesses concluded - McKenzie was "extremely positive" - confirmed that the texts support completely the theory of the banks innocence

Divito Diary
p. I-99

2/20/90

Alan Raul, Richard Crowder, and Kevin Brosch have breakfast with William Safire

Appendix, May 21
part 2, p. 254

Raul meets at State Dept., with Sofaer, Edie Holiday of Treasury, Bob Mueller and Mark Richard of DOJ, Kevin Brosch, Snead and Goldthwait also present

- coordinate questions to be submitted to Iraq as part of its cooperation in USDA administrative review

Raul also speaks to Sofaer regarding status of BNL investigation

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| 2/22/90 | Divito: spoke with Kirwan -he "confirmed categorically the solidity of our line and her [McKenzie] pro-BNL persuasion | Divito Diary p. I-105 |
| 2/23/90 | McKenzie and Rusketele meet with Urgenson of DOJ, and members of U.S.D.A. - McKenzie advocates Rome as victim theory | Lacey Report |
| 3/2/90 | Alan Raul briefs Edie Holiday of Treasury on Iraq generally (not just CCC) <u>via secure telephone</u> | |
| 3/5/90 | State Dept. memo - National Security Council staff contacted the USDA March 2 to inquire about the delay in the issuance of credits after the Iraqi ambassador complained to General Scowcroft | |
| 3/5/90 | Divito: Kirwan calls - the call from the Justice Department which <u>should have given the go-ahead for the indictment never arrived</u> - she [McKenzie] was advised by Ted Greenberg, acting head of Fraud section of D.O.J. that it is necessary to investigate further - "presumably to check on the possible co-responsibility of the bank - U.S. lawyers are working with Bill Hendricks (King & Spalding) head of Fraud Section at DOJ i=until 8/4/89 - Fraud section advocating theory of co-responsibility of BNL General Management - "basic impression is that the situation seems to be sliding from the original technical-legal context to a more markedly political one. Under these circumstances we cannot preclude the affair evolving toward solutions outside the Justice system. | Divito Diary p. I-112 |
| 3/6/90 | Italian P.M. Andreotti meets with U.S.A.G. Thornburgh | |
| 3/9/90 | Alan Raul briefs Rostow of NSC "regarding information from Justice on Iraq via secure telephone." | Appendix, May 21 part 2, p. 255 |
| 3/12/90 | Alan Raul meets with McKenzie, officials from main Justice and Kevin Brosch regarding Iraq. | |
| 3/13/90 | Alan Raul speaks with <u>Jay Bybee in White House counsel's office "via secure telephone regarding information from Justice concerning Iraq"</u> Divito: "By now, it is clear that the Department of Justice | Appendix, May 21 part 2, p. 255 Divito Diary |

has serious reservations about the preliminary conclusions reached by the local U.S. Attorney. These reservations apply especially to the exclusion of BNL guilt in the affair..."

p. I-116

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| 3/15/90 | Letter from Drew Arena (OIA) at Justice to Michael Young at Stat Dept. - wants to interview Iraqis inc connection with investigation - will also schedule C.C.C. meetings for same time period to accommodate Iraqis. | Appendix, May 21 part 2, p. 503 |
| 3/17/90 | Ambassador Petrignani meets with reps. of DOJ to discuss BNL matter - Robin Ross, Edward Dennis & Mark Richards | Lacey Report |
| 3/20 - 3/22/90 | Urgenson and Clark meet in Atlanta to discuss role of BNL-Rome - Urgenson meets with reps of Fed. Reserve to review results of 8/89 examination of BNL(A) | |
| 3/21/90 | Divito - Driver calls - reported on the "first results of the meetings between ...McKenzie and the officials of the Justice Department in Washington..." | Divito Diary p. I-122 |
| 3/21/90 | Italian Ambassador Petrignani tells Thornburgh that indictment of BNL-Rome would "add insult to injury" | Lacey Report |
| 3/22/90 | Divito: Kirwan called - McKenzie "has decided that there are elements on which to co-indict the Bank, <u>after reading the inspection report from the Federal Reserve of Atlanta...</u> " - she requested delivery of Bank of Italy report | Divito Diary p. I-123 |
| 3/23/90 | Divito: "It is evident that the strategy of cooperating with the Assistant U.S. Attorney is losing its value. <u>The one already launched of taking advantage of access at political levels appears more promising, given the substantial change in the picture.</u> " | Divito Diary p. I-124 |
| 3/27/90 | Petrignani meets with Abraham Sofaer, Legal Adviser to State Department. Memo from Ray Rukstele to Gerrilyn Brill - reflects Rukstele conversation with Larry Urgenson of March 22 - Urgenson felt investigation was not complete and that McKenzie conclusions regarding BNL were not substantiated | Divito Diary p. I-127 Appendix, May 21 part 2, p. 516 |
| 3/30/90 | Bank of Italy sends its investigative report to Fed. Reserve | |

- concludes possibility that management of BNL may have known of BNL(A)
- concludes that monitoring procedures were inadequate

- 4/90 McKenzie sends prosecution memo. to DOJ
- shows intent to prosecute Drogoul, Fiebelkorn, Barde, Decarolis, New and Pierre Drogoul, as well as Entrade and 6 Iraqis
 - details 2 phases to investigation
 - re-emphasizes Rome as victim
- 4/90 Officials from U.S.D.A. (non Task Force) travel to Baghdad to investigate Iraqi conduct of C.C.C. program
- 4/2/90 U.S.D.A. memo - withholding approval of 2nd tranche as they are awaiting announcement of indictments
- 4/4/90 Divito and others meet with Griffin Bell and Bill Hendricks of King & Spalding
- also met with Petrignani who debriefed them regarding his meetings w/Sate and Justice Dept. officials
- 4/5/90 Thomas Baxter of Fed. Reserve memo to Corrigan
- one of BNL transactions with Rafidain Bank "at some point referenced nuclear detonators"
 - difficulties in investigation compounded "by what is perceived as interference from the Justice Department in Washington"
- Divito and others meet with William Rogers, Roger Clark and David Whitescarver of Rogers & Wells, Hendricks, Driver, and Petrignani
- 5/90 Divito and Kirwan meet with McKenzie and Wade.
- 4/12/90 Therese Barden tells Art Wade and Bob Kennedy that Drogoul told her Florio had authorized the excess loans to Iraq.
- 4/18/90 - 4/22/90 U.S.D.A. and C.C.C. visit Baghdad as part of review of BNL involvement in C.C.C. program
- 4/26/90 Kelly of NESA testifies before Subcommittee on Europe and the Middle East: "Regarding our agricultural programs, U.S. policy...has been not to single out farm exports as tool of foreign policy..."
- 5/90 U.S.D.A. sends memo to Scowcroft - "it cannot

Divito Diary
p. II-2-3

Divito Diary
p. II-5

Divito Diary
p. II-7-8
Memorandum of
Interview

be overemphasized that any constraint on C.C.C credit guarantees must not be based on a foreign policy rationale.

Memo from Sandra Charles, N.S.C. Director for Near East and South East Asian Affairs to Crowder of U.S.D.A. after reviewing post-Iraq visit report of U.S.D.A. on C.C.C. program
- "N.S.C. has no objection to your releasing the report..."

Appendix, May 21
part 2, p. 605

Memo from Glaspie to Kimmit at State, and Charles, Scowcroft and Timothy Deal at N.S.C.
- discusses rumor that U.S.D.A had decided to withhold second tranche of credits - states that from a foreign policy perspective the decision is difficult to justify.
- references the "Dole delegation..."

5/2/90

Urgenson memos file that BNL's presentation during investigation, marked by "manipulation and self-protection"

Lacey Report

5/4/90

Memo from Ray Rukstele to Larry Urgenson
- elaborates on Iraqi criminal complicity in scheme to defraud, and status as potential defendants in indictment

Appendix, May 21
part 2, p. 575

5/7/90

McKenzie memos Urgenson that U.S.D.A. report did not accurately reflect information she had given to U.S.D.A.
- wants to correct any misunderstanding on part of U.S.D.A. before remaining \$500 million in C.C.C guarantees are extended to Iraq.

5/15/90

Letter from Mark Richard of DOJ to Alan Raul documenting Iraqi criminal complicity and identifying specific Iraqi individuals as targets of investigation

Appendix, May 21
part 2, p. 591

5/16/90

Memo from Crowder and Raul at U.S.D.A. to Richard McCormack at State, Edward A. Dennis, Asst. Attorney General and Timothy Deal at N.S.C. covering draft of final U.S.D.A. report

5/21/90

Memo from Gale McKenzie to Larry Urgenson
- criticizes USDA administrative review of CCC program
- opposes any DOJ clearance of the report

FAS of U.S.D.A releases its report on review of Iraq's C.C.C. program
- identifies 4 problem areas: (1) unusually high commodity prices in sales to Iraq; (2) Iraq requests for

after sales services; (3) questions regarding the arrival of commodities in Iraq; and (4) attempts by Iraq to impose taxes on C.C.C. transactions.

- 5/29/90 Reps. from DOJ and Task Force meet with State Dept. and NSC officials, including N. Rostow, Special Assistant to Bush.
- Rostow briefed on the USAO theory of Iraqi complicity
- Meeting of "Deputies Committee" of NSC re: C.C.C. credits to Iraq.
- resolved that second \$500 million would not be advanced until Atlanta investigation was complete
- Appendix, May 21 part 2, p. 626.
- 5/30/90 Divito: Driver called - McKenzie told Kirwan that BNL "is no longer a target of indictment, so long as the Italian magistrate does not intend to prosecute it"
- Divito Diary p. II-65
- 1990 (date unknown) McKenzie inquires of Washington regarding meeting between Baker and Wafai Dajani regarding C.C.C.
- told that report has been reviewed and is not relevant
- 7/90 Cable from U.S. Embassy/Rome to Sec. of State
- Cantoni of BNL expressed to Ambassador his "concern" over BNL investigation; "made a pitch for USG to go slowly before making indictment."
- also expressed opinion that Israelis exposed scandal
- 7/2/90 McKenzie memo to Ray Rukstele notes that Kevin Brosch of U.S.D.A. General Counsel's Office met Dajani at cocktail party - Dajani told him "Rome knew"
- Mck. also notes tracing of funds from Matrix Churchill back to England and to Baghdad
- 7/3/90 Letter from McKenzie to Justice (Mark Richard)
- raises specter of C.I.A. involvement - wants DOJ assistance in assessing extent of C.I.A. involvement
- 8/2/90 IRAQ INVADES KUWAIT—
- 8/3/90 DOJ makes first document request to C.I.A.
- list included 25 names (16 Iraqis) being considered for indictment - sought info re:

these individuals

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| 8/17/90 | Divito: McKenzie wants to arrange telephone interview with Monaco - purpose is to decide whether to indict certain employees of the branch for warning Drogoul of inspections and audits | Divito Diary p. III-44-45 |
| 8/21/90 | McKenzie interviews Monaco by telephone - talked about Antonio Costa - talked about Monaco's visit to Baghdad in 2/88 - also interviewed DiNisio re: Baghdad | Divito Diary p. III-49 |
| 8/24/90 | C.I.A. sends interim report | |
| 8/28/90 | Divito: speaks to Petti - he had met with McKenzie, and had a long list of requests from her - grand jury investigation has taken a 'drastic turn' seeking evidence of Iraqi involvement in case | Divito Diary p. III-56-57 |
| 9/13/90 | Divito: <u>McKenzie intends to participate in meetings with Senator Carta - "to safeguard her own interpretation of the affair, especially to see BNL portrayed as a victim..."</u> | Divito Diary p. III-74 |
| 9/21/90 | Urgenson, McKenzie and Wade meet with Italian Amb. Petignani, Senator Carta (of Italian Senate invest.), and Zanelli (counsel to investig.). - Petignani again pushes BNL-Rome as victim | Lacey Report |
| 9/26/90 | Thornburgh writes Gonzalez stating DOJ's "strong objections" to his investigation and refers to BNL as "sensitive case with national security concerns." | |
| 10/90 | Rep. Doug Barnard (House Committee on Govt. Operations) requests information from Commerce Dept. on licensing of exports of dual use goods to Iraq. - Kloske orders printout of export licenses to be altered to delete word "military" wherever it appears | |
| 10/2/90 | C.I.A. formally responds to DOJ document request - sends 21 classified reports and 4 press reports re: BNL affair - also sent documents originated by State Dept., D.I.A. and NSA to those agencies for them to distribute to DOJ. | |
| 10/7/90 | Divito: William Rogers called - told him that Thornburgh | Divito Diary |

had written Gonzalez asking him not to conduct hearings

p. IV-8

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| 10/8/90 | DOJ send second document request to C.I.A. - specific request for documents on dual use exports | |
| 10/18/90 | Gordon Cooper of Matrix Churchill granted use immunity | Letter from McKenzie to Cooper lawyers |
| 11/90 | Clark still fervent about BNL-Rome complicity | |
| 11/20/90 | Pedde interviewed by Kirwan by telephone with McKenzie present - denied knowledge - refuted "Socialist party" theory | |
| 11/23/90 | D.I.A. responds to October 8 DOJ document request - send three reports | |
| 12/18/90 | C.I.A. responds to October 8 DOJ document request - 11 open source reports - classified summary of three reports - 8 classified reports | |
| 1/3/91 | Italian investigative delegation meets with McKenzie, Wade, Clark and Lippman - Zanelli and Carta expressed doubts that only BNL(A) was involved | |
| 1/11/91 | Meeting between Urgenson and Clark from DOJ and Brill, McKenzie, Rusketale and Wade - <u>Task force pushed Rome as victim theory, citing "national security concerns."</u> | Lacey Report |
| 1/15/91 | Divito: Driver called - "sensational news" - McKenzie called and 'unofficially notified him that she had received the green light to take her case to the grand jury - Driver gives names of a dozen past and present BNL employees who will testify | Divito Diary p. V-9 |
| 1/16/91 | McKenzie Memo to file - reflects meeting with Lackland on same date - Lackland confirmed that CD states "he told no one at BNL outside BNL-Atlanta..." nor did he receive permission or authorization from anyone at BNL..." - memo also reflects that CD remained interested in pleading to regulatory 1001 counts | |
| 1/21/91 | Divito: Grand jury witnesses meet in Garone's office to prepare for trip to Atlanta | Divito Diary p. V-13 |

- witnesses to be called; Cassinelli, Nesi, Pedde, D'Addosio, Florio, DiVito, Lombardi, Bonamici, Constatnini, Monaco, Messere (Sardelli and Guadagnini also to be called)

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| 1/22/91 | Paul Henderson of Matrix Churchill Ltd granted use immunity | Letter from McKenzie to Henderson lawyers |
| 1/23/91 | Divito arrives in Atlanta w/Petti and Digiovanni - meets w/Driver to go over grand jury testimony of witnesses - "it will be made clear to them that they <u>are not targets, but witnesses for the prosecution</u> | Divito Diary p. V-15 |
| 1/24/91 | Atlanta Grand Jury begins hearing evidence. Paul Henderson debriefed by McKenzie, Campbell, and U.S. Customs agent - tells them details of Matrix Churchill operation - tells them that Taha informed him of Rome's complicity and awareness in BNL lending to Iraq | |
| 1/25/91 | Clark sits in Grand Jury and listens to testimony - memos Urgenson that adequacy of BNL's management and auditing controls had been explained sufficiently to preclude criminal liability of BNL-Rome Divito: McKenzie meets with BNL witnesses <u>together</u> at King & Spalding from 11:30 A.M. until after midnight. | Lacey Report Divito Diary p. V-16 |
| 1/28/91 | Divito: grand jury examination of BNL witnesses begins - Peter Clark participated in questioning | Divito Diary p. V-18 |
| 2/91 | C.I.A. report reflecting that Iraqi officials had sought and obtained signatures of BNL-Rome officials for certain loans originally approved by BNL(A) | SSCI Report |
| 2/5/91 | Clark memos files re: his conversation with DiVito of BNL-Rome - asked DiVito whether BNL was aware of MEED article in which BNL(A) C.C.C. line was accurately documented - DiVito replied that in 1988-BNL had cut itself off from "routine exchanges with officers at other banks" | Lacey Report Divito Diary p. V-23 |
| 2/6/91 | Divito: continued to work with lawyers on lawsuits, especially one against Entrade - "the Assistant U.S. | Divito Diary p. V-24 |

Attorney strongly suggested it some time ago and it just cannot be put off any more."

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| 2/7/91 | Divito: filed suit against Entrade in district court - "As mentioned, this initiative <u>was strongly advised by the Assistant U.S. Attorney. it complemented her thesis in the grand jury investigation.</u> A suit against Entrade reaffirms the bank's condition as a victim of the fraud." | Divito Diary p. V-25 |
| | Divito: meets w/Clark and Bob Kennedy of Fed Reserve | Divito Diary p. V-23 |
| 2/27/91 | OPERATION DESERT STORM ENDS | |
| 2/28/91 | 347-count Indictment returned | |
| 6/2/92 - 8/20/92 | Drogoul enters guilty plea - Drogoul participates in 33 debriefing sessions | |
| 10/5/92 | Judge Marvin Shoob vacates Drogoul's guilty plea | |
| 12/15/92 | BNL sues the United States in the Court of Claims for payment of C.C.C. guarantees on defaulted loans to Iraq. | |
| 4/10/93 | Counsel for Drogoul submits memorandum on relevancy of Rome's knowledge to defense of indictment | |
| 4/23/93 | In <u>BNL V. United States</u> government moves for stay pending criminal trial - argues " <u>It is evident that there is more than idle speculation that evidence might evolve in Mr. Drogoul's trial further implicating BNL and raising obvious conflicts.</u> " McKenzie retracts grant of immunity to Paul Henderson | Government motion p. 11 |

CERTIFICATE OF SERVICE

This is to verify that I have this day served counsel for the opposing party in the foregoing matter with a copy of Defendant's Motion to Disqualify the Department of Justice and Defendant's Memorandum of Law in Support of his Motion to Disqualify the Department of Justice from the Investigation and Prosecution of this Indictment by "Express Mail" and depositing in the United States Mail a copy of same in a properly addressed envelope with adequate postage thereon addressed to:

AUSA, Douglas Frazier, Esq.
BNL Task Force
United States Attorney's Office
Department of Justice
Richard Russell Federal Building
Box 5
Atlanta, Georgia 30303

This 25th day of June, 1993.

A handwritten signature in black ink, appearing to read "R. M. Simels", written over a horizontal line.

ROBERT M. SIMELS
Attorney at Law

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